

§ 422.1094

(ii) Grants opportunity to appear in the case of a Board revision.

(b) *Basis for revised decision and right to review.*

(1) If a revised decision is necessary, the ALJ or the Departmental Appeals Board, as appropriate, renders it on the basis of the entire record.

(2) If the decision is revised by an ALJ, the Departmental Appeals Board may review that revised decision at the request of either party or on its own motion.

§ 422.1094 Notice and effect of revised decision.

(a) *Notice.* The notice mailed to the parties states the basis or reason for the revised decision and informs them of their right to Departmental Appeals Board review of an ALJ revised decision, or to judicial review of a Board reviewed decision.

(b) *Effect*—(1) *ALJ revised decision.* An ALJ revised decision is binding unless it is reviewed by the Departmental Appeals Board.

(2) *Departmental Appeals Board revised decision.* A Board revised decision is binding unless a party files a civil action in a district court of the United States within the time frames specified in 422.858.

Subpart U [Reserved]

Subpart V—Medicare Advantage Marketing Requirements

SOURCE: 73 FR 54220, Sept. 18, 2008, unless otherwise noted.

§ 422.2260 Definitions concerning marketing materials.

As used in this subpart—

Marketing materials. Marketing materials include any informational materials targeted to Medicare beneficiaries which:

(1) Promote the MA organization, or any MA plan offered by the MA organization.

(2) Inform Medicare beneficiaries that they may enroll, or remain enrolled in, an MA plan offered by the MA organization.

(3) Explain the benefits of enrollment in an MA plan, or rules that apply to enrollees.

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(4) Explain how Medicare services are covered under an MA plan, including conditions that apply to such coverage.

(5) May include, but are not limited to, the following:

(i) General audience materials such as general circulation brochures, newspapers, magazines, television, radio, billboards, yellow pages, or the Internet.

(ii) Marketing representative materials such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(iv) Promotional materials such as brochures or leaflets, including materials for circulation by third parties (for example, physicians or other providers).

(v) Membership communication materials such as membership rules, subscriber agreements, member handbooks and wallet card instructions to enrollees.

(vi) Letters to members about contractual changes; changes in providers, premiums, benefits, plan procedures etc.

(vii) *Membership activities* (for example, materials on rules involving non-payment of premiums, confirmation of enrollment or disenrollment, or nonclaim specific notification information).—

(6) *Marketing materials exclude ad hoc enrollee communications materials, meaning informational materials that—*

(i) Are targeted to current enrollees;

(ii) Are customized or limited to a subset of enrollees or apply to a specific situation;

(iii) Do not include information about the plan's benefit structure; and

(iv) Apply to a specific situation or cover claims processing or other operational issues.

[73 FR 54220, Sept. 18, 2008, as amended at 75 FR 19814, Apr. 15, 2010]

§ 422.2262 Review and distribution of marketing materials.

(a) *CMS review of marketing materials.*

(1) Except as provided in paragraph (b) of this section, an MA organization may not distribute any marketing materials (as defined in § 422.2260 of this subpart), or election forms, or make such materials or forms available to